

SECOND REGULAR SESSION

HOUSE BILL NO. 1219

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ELMER (Sponsor), DIEHL, FRAKER, KORMAN, LONG, SCHOELLER, FUHR, RICHARDSON, COX, HOSKINS, JONES (117), GUERNSEY, CRAWFORD, HIGDON, JONES (89), McNARY AND WALLINGFORD (Co-sponsors).

5103L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 213.010, 213.101, and 213.111, RSMo, and to enact in lieu thereof four new sections relating to unlawful discriminatory practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 213.010, 213.101, and 213.111, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 213.010, 213.101, 213.111, and
3 213.200, to read as follows:

213.010. As used in this chapter, the following terms shall mean:

- 2 (1) "Age", an age of forty or more years but less than seventy years, except that it shall
3 not be an unlawful employment practice for an employer to require the compulsory retirement
4 of any person who has attained the age of sixty-five and who, for the two-year period
5 immediately before retirement, is employed in a bona fide executive or high policy-making
6 position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from
7 a pension, profit sharing, savings or deferred compensation plan, or any combination of such
8 plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars;
- 9 (2) **"Because" or "because of", as it relates to a decision or action, the protected**
10 **criterion was a motivating factor;**
- 11 (3) "Commission", the Missouri commission on human rights;
- 12 [(3)] (4) "Complainant", a person who has filed a complaint with the commission
13 alleging that another person has engaged in a prohibited discriminatory practice;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 [(4)] (5) "Disability", a physical or mental impairment which substantially limits one or
15 more of a person's major life activities, being regarded as having such an impairment, or a record
16 of having such an impairment, which with or without reasonable accommodation does not
17 interfere with performing the job, utilizing the place of public accommodation, or occupying the
18 dwelling in question. For purposes of this chapter, the term "disability" does not include current,
19 illegal use of or addiction to a controlled substance as such term is defined by section 195.010;
20 however, a person may be considered to have a disability if that person:

21 (a) Has successfully completed a supervised drug rehabilitation program and is no longer
22 engaging in the illegal use of, and is not currently addicted to, a controlled substance or has
23 otherwise been rehabilitated successfully and is no longer engaging in such use and is not
24 currently addicted;

25 (b) Is participating in a supervised rehabilitation program and is no longer engaging in
26 illegal use of controlled substances; or

27 (c) Is erroneously regarded as currently illegally using, or being addicted to, a controlled
28 substance;

29 [(5)] (6) "Discrimination", any unfair treatment based on race, color, religion, national
30 origin, ancestry, sex, age as it relates to employment, disability, or familial status as it relates to
31 housing;

32 [(6)] (7) "Dwelling", any building, structure or portion thereof which is occupied as, or
33 designed or intended for occupancy as, a residence by one or more families, and any vacant land
34 which is offered for sale or lease for the construction or location thereon of any such building,
35 structure or portion thereof;

36 [(7)] (8) "Employer" [includes] , **a person engaged in an industry affecting commerce**
37 **who has six or more employees for each working day in each of the twenty or more**
38 **calendar weeks in a current or preceding calendar year, and shall include** the state, or any
39 political or civil subdivision thereof[, or any person employing six or more persons within the
40 state, and any person directly acting in the interest of an employer], but does not include **an**
41 **individual employed by an employer, or a bona fide private membership club, other than**
42 **a labor organization, which is exempt from taxation under 26 U.S.C. Section 501(c), or**
43 corporations and associations owned and operated by religious or sectarian groups;

44 [(8)] (9) "Employment agency" includes any person or agency, public or private,
45 regularly undertaking with or without compensation to procure employees for an employer or
46 to procure for employees opportunities to work for an employer and includes any person acting
47 in the interest of such a person;

48 [(9)] (10) "Executive director", the executive director of the Missouri commission on
49 human rights;

50 [(10)] **(11)** "Familial status", one or more individuals who have not attained the age of
51 eighteen years being domiciled with:

52 (a) A parent or another person having legal custody of such individual; or

53 (b) The designee of such parent or other person having such custody, with the written
54 permission of such parent or other person. The protections afforded against discrimination on
55 the basis of familial status shall apply to any person who is pregnant or is in the process of
56 securing legal custody of any individual who has not attained the age of eighteen years;

57 [(11)] **(12)** "Human rights fund", a fund established to receive civil penalties as required
58 by federal regulations and as set forth by subdivision (2) of subsection 11 of section 213.075, and
59 which will be disbursed to offset additional expenses related to compliance with the Department
60 of Housing and Urban Development regulations;

61 [(12)] **(13)** "Labor organization" includes any organization which exists for the purpose,
62 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
63 terms or conditions of employment, or for other mutual aid or protection in relation to
64 employment;

65 [(13)] **(14)** "Local commissions", any commission or agency established prior to August
66 13, 1986, by an ordinance or order adopted by the governing body of any city, constitutional
67 charter city, town, village, or county;

68 [(14)] **(15)** "Person" includes one or more individuals, corporations, partnerships,
69 associations, organizations, labor organizations, legal representatives, mutual companies, joint
70 stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized
71 groups of persons;

72 [(15)] **(16)** "Places of public accommodation", all places or businesses offering or
73 holding out to the general public, goods, services, privileges, facilities, advantages or
74 accommodations for the peace, comfort, health, welfare and safety of the general public or such
75 public places providing food, shelter, recreation and amusement, including, but not limited to:

76 (a) Any inn, hotel, motel, or other establishment which provides lodging to transient
77 guests, other than an establishment located within a building which contains not more than five
78 rooms for rent or hire and which is actually occupied by the proprietor of such establishment as
79 his residence;

80 (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility
81 principally engaged in selling food for consumption on the premises, including, but not limited
82 to, any such facility located on the premises of any retail establishment;

83 (c) Any gasoline station, including all facilities located on the premises of such gasoline
84 station and made available to the patrons thereof;

85 (d) Any motion picture house, theater, concert hall, sports arena, stadium, or other place
86 of exhibition or entertainment;

87 (e) Any public facility owned, operated, or managed by or on behalf of this state or any
88 agency or subdivision thereof, or any public corporation; and any such facility supported in
89 whole or in part by public funds;

90 (f) Any establishment which is physically located within the premises of any
91 establishment otherwise covered by this section or within the premises of which is physically
92 located any such covered establishment, and which holds itself out as serving patrons of such
93 covered establishment;

94 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to grant for
95 consideration the right to occupy premises not owned by the occupant;

96 [(17)] (18) "Respondent", a person who is alleged to have engaged in a prohibited
97 discriminatory practice in a complaint filed with the commission;

98 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful under this
99 chapter.

213.101. 1. The provisions of this chapter shall be construed to accomplish the purposes
2 thereof and any law inconsistent with any provision of this chapter shall not apply. Nothing
3 contained in this chapter shall be deemed to repeal any of the provisions of any law of this state
4 relating to the discrimination because of race, color, religion, national origin, sex, ancestry, age,
5 disability, or familial status.

6 2. It is a duty of the judicial branch to reduce the cost of litigation and end disputes
7 timely. If a party to litigation files a motion for summary judgment pursuant to the
8 Missouri rules of civil procedure in a case pursuant to this chapter, then the court shall
9 analyze the merits of the motion for summary judgment.

10 (1) When considering a motion for summary judgment where the plaintiff submits
11 direct evidence of discrimination, the burden shifts to the employer to provide evidence
12 that the same employment decision would have occurred regardless of the direct evidence
13 presented by the plaintiff. If the court determines that the employer would have taken the
14 same action regardless of the evidence submitted by the plaintiff, then the court shall rule
15 in favor of the employer.

16 (2) When considering a motion for summary judgment, the burden shall be on the
17 plaintiff to establish an allegation of discrimination where the plaintiff does not have direct
18 evidence of discrimination. The employer may then produce evidence of non-
19 discriminatory reasons for the employment decision. If the employer produces evidence
20 of non-discriminatory reasons for the employment decision, then the plaintiff shall present
21 facts to show the employer's explanation is insufficient or illegitimate. If the court

22 **determines that the employer relied upon non-discriminatory reasons for the employment**
23 **decision, the court shall rule in favor of the employer.**

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an
2 unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent
3 that the alleged violation of section 213.070 relates to or involves a violation of section 213.055
4 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public
5 accommodations, the commission has not completed its administrative processing and the person
6 aggrieved so requests in writing, the commission shall issue to the person claiming to be
7 aggrieved a letter indicating his or her right to bring a civil action within ninety days of such
8 notice against the respondent named in the complaint. If, after the filing of a complaint pursuant
9 to sections 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of
10 section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or
11 subdivision (3) of section 213.070 as it relates to housing, and the person aggrieved so requests
12 in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating
13 his or her right to bring a civil action within ninety days of such notice against the respondent
14 named in the complaint. Such an action may be brought in any circuit court in any county in
15 which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or
16 associate circuit judge. Upon issuance of this notice, the commission shall terminate all
17 proceedings relating to the complaint. No person may file or reinstate a complaint with the
18 commission after the issuance of a notice under this section relating to the same practice or act.
19 Any action brought in court under this section shall be filed within ninety days from the date of
20 the commission's notification letter to the individual but no later than two years after the alleged
21 cause occurred or its reasonable discovery by the alleged injured party.

22 **2. Any party to any action initiated under this section may demand a trial by jury.**
23 **If such trial occurs in the circuit courts of the state of Missouri, the Missouri common law**
24 **relating to the presentation of evidence to a jury shall apply at trial, whether before a judge**
25 **or jury.**

26 **3.** The court may grant as relief, as it deems appropriate, any permanent or temporary
27 injunction, temporary restraining order, or other order, and may award to the plaintiff actual and
28 punitive damages, and may award court costs and reasonable attorney fees to the prevailing
29 party, other than a state agency or commission or a local commission; except that, a prevailing
30 respondent may be awarded court costs and reasonable attorney fees only upon a showing that
31 the case is without foundation.

32 **4. An award of damages shall include all future pecuniary losses, emotional pain,**
33 **suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary**
34 **losses, and punitive damages awarded under this section.**

35 **5. The total amount of damages awarded by the court for each plaintiff shall not**
36 **exceed:**

37 **(1) Actual back pay, interest on back pay, other equitable relief, court costs and**
38 **reasonable attorney fees if granted by the court, and other damages up to the limits in**
39 **subdivision (2) of this subsection; and**

40 **(2) (a) In the case of a respondent who has more than five and fewer than one**
41 **hundred employees in each of twenty or more calendar weeks in the current or preceding**
42 **calendar year, fifty thousand dollars;**

43 **(b) In the case of a respondent who has more than one hundred and fewer than two**
44 **hundred employees in each of twenty or more calendar weeks in the current or preceding**
45 **calendar year, one hundred thousand dollars;**

46 **(c) In the case of a respondent who has more than two hundred and fewer than five**
47 **hundred employees in each of twenty or more calendar weeks in the current or preceding**
48 **calendar year, two hundred thousand dollars;**

49 **(d) In the case of a respondent who has more than five hundred employees in each**
50 **of twenty or more calendar weeks in the current or preceding calendar year, three hundred**
51 **thousand dollars;**

52 **6. The limits set forth in subsection 5 of this section shall increase or decrease in the**
53 **same amounts as any corresponding limits are increased or decreased in section 42 U.S.C.**
54 **1981a(b)(3).**

55 **7. Notwithstanding subsection 5 of this section, punitive damages shall not be**
56 **awarded against the state of Missouri or any other of its political subdivisions; except in**
57 **claims for discriminatory housing practices as authorized in section 213.040.**

213.200. 1. This section shall be known and may be cited as the "Whistleblower's
2 **Protection Act".**

3 **2. As used in this section, the following terms shall mean:**

4 **(1) "Because" or "because of", as it relates to a decision or action, the person's**
5 **status as a protected person was a motivating factor;**

6 **(2) "Employer", a person engaged in an industry affecting commerce who has six**
7 **or more employees for each working day in each of twenty or more calendar weeks in a**
8 **current or preceding calendar year, and shall include the state, or any political or civil**
9 **subdivision thereof but does not include an individual employed by an employer, or a bona**
10 **fide private membership club, other than a labor organization, which is exempt from**
11 **taxation under 26 U.S.C. Section 501(c), or corporations and associations owned and**
12 **operated by religious or sectarian groups;**

13 (3) "Proper authorities", a governmental or law enforcement agency, or an officer
14 or the employee's human resources representative employed by the employer;

15 (4) "Protected person", a person who has reported to the proper authorities an
16 unlawful act of the employer or its agent or who reports to an employer serious misconduct
17 of the employer or its agent that violates a clear mandate of public policy as articulated in
18 a constitutional provision, statute, regulation promulgated under statute, or rule created
19 by a governmental body, or a person who has refused to carry out a directive issued by an
20 employer or its agent that if completed would be a violation of the law. Additionally, a
21 person who engages in conduct otherwise protected by statute or regulation is a protected
22 person.

23 3. This section is intended to codify the existing common law exceptions to the at-
24 will employment doctrine, and to limit their future expansion by the courts. This section
25 shall provide the exclusive remedy for any and all unlawful employment practices
26 articulated herein and hereby abrogates any common law causes of action to the contrary.

27 4. It shall be an unlawful employment practice for an employer, as defined in
28 subdivision (2) of subsection 2 of this section, to discharge or retaliate against an individual
29 defined as a protected person in this section, because of that person's status as a protected
30 person.

31 5. A protected person aggrieved by a violation of this section shall have a private
32 right of action for damages for violations of this section which may be filed in a circuit
33 court of competent jurisdiction. The Missouri human rights commission shall not have
34 jurisdiction to review or adjudicate claims brought pursuant to this section. The court may
35 grant as relief, as it deems appropriate, any permanent or temporary injunction,
36 temporary restraining order, or other order, and may award to the plaintiff actual and
37 punitive damages.

38 6. Any party to any action initiated under this section may demand a trial by jury.

39 7. The court may award to the plaintiff actual and punitive damages. An award
40 of damages shall include all future pecuniary losses, emotional pain, suffering,
41 inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses,
42 and punitive damages awarded under this section.

43 8. The total amount of damages awarded by the court for each complainant shall
44 not exceed:

45 (1) Actual back pay, interest on back pay, other equitable relief, and other damages
46 up to the limits in subdivision (2) of this subsection; and

47 **(2) (a) In the case of a respondent who has more than five and fewer than one**
48 **hundred one employees in each of twenty or more calendar weeks in the current or**
49 **preceding calendar year, fifty thousand dollars;**

50 **(b) In the case of a respondent who has more than one hundred and fewer than two**
51 **hundred one employees in each of twenty or more calendar weeks in the current or**
52 **preceding calendar year, one hundred thousand dollars;**

53 **(c) In the case of a respondent who has more than two hundred and fewer than five**
54 **hundred one employees in each of twenty or more calendar weeks in the current or**
55 **preceding calendar year, two hundred thousand dollars;**

56 **(d) In the case of a respondent who has more than five hundred employees in each**
57 **of twenty or more calendar weeks in the current or preceding calendar year, three hundred**
58 **thousand dollars.**

59 **9. The limits set forth in subsection 8 of this section shall increase or decrease in the**
60 **same amounts as any corresponding limits are increased or decreased in Section 42 U.S.C.**
61 **1981a(b)(3).**

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